IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.101 OF 2004

IN

WRIT PETITION NO.6269 OF 2004

Ashok Bandu Tawre ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

.....

Mr.Chandrakant N.Chavan for Petitioner.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 22, 2004.

P.C.

1. Only two points have been raised before me for review of my order dated August 4, 2004. The first contention is that not only the Petitioner belonged to reserve category but the post of Sarpanch was also reserved for the present term. It is submitted that there is no other candidate belonging to reserve category for which reason No

Confidence Motion could not have been moved at all. In the first place, this contention was not raised before me when the matter was argued. Secondly, the grievance can be answered on the reasons recorded in para 2 of the order. It is observed that Section 35 of The Bombay Village Panchayats Act, 1958 makes no such distinction. There is nothing in the said Act to suggest that remedy of No Confidence is not available against Sarpanch who belongs to reserve category or when the post of Sarpanch is reserved. Hence, this plea is devoid of merits.

2. The second contention raised before me is that the Respondent No.8 was ineligible to participate and vote in the meeting, in which, No Confidence Motion was moved. This grievance has been considered in Para 4 of my earlier decision. In the first place, I have observed that at the relevant time, Respondent No.8 was eligible to participate in the meeting. If it is so, his vote cannot be discarded. Indeed, I have further observed that the No Confidence Motion was carried out by absolute majority. The grievance now made

before me is that the constitution of Panchayat was of nine members and the Motion cannot be treated as validly carried by 5 against 3, if the vote of Respondent No.8 was to be excluded. Firstly, there is no express ground in the Writ Petition or even the Review Petition in this behalf. The argument made before me proceeds on the basis that the two-third of eight will be more than five votes for the Motion to be treated as validly carried out. However, as mentioned earlier, I have taken the view that the vote of Respondent No.8 cannot be discarded for the reasons recorded in Para 4 of the Order. Moreover, even if one vote of Respondent No.8 was to be discarded even then it will make no difference. For 2/3rd of 8 will be little over (fraction) 5 votes. As the fraction does not exceed 5.5 votes, it will have to be rounded of as 5 votes, which have been admittedly secured even after excluding one vote of Respondent No.8. Hence, no case for review. Dismissed.

A.M.KHANWILKAR, J.